

REMARKS

The Office Action dated September 9, 2003 has been read and carefully considered and the present amendment submitted to clarify the language of the claims to better define the subject invention.

In that Office Action, claims 29-31 were objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must be written in the alternative. Claims 1-25 and 27-31 were rejected under 35 U.S. C. 103(a) as being unpatentable over Charlton *et al*, U.S. Patent 5,208,163 in view of Jenkins *et al*, U.S. Patent 6,423,550.

As to claims 29-31, an amendment has been made to those claims to eliminate the use of multiple dependent claims. Applicant apologizes for the misunderstanding, however, it appeared from Applicant's file that the multiple dependency had been previously corrected.

As to the rejection based upon 35 U.S.C. 103(a) Applicant refers again to the prior amendment that fully discussed and explained the purpose of the throughbore in Applicant's test device and the need for that throughbore to pass "entirely through the substrate" so that such throughbore is a location, size and shape suited "for access by said automatic testing machine" so that the sample on the supportive material can be accessed by "punching out at least a portion of the sample deposition portion".

To reiterate therefore, it is very important that (1) the sample collected with Applicant's test device wet the entire area of the supportive material and also that (2) such area be punched out to obtain that sample, thus the need that the bore be a "throughbore" that passes entirely through the substrate, i.e. through the entire test device since the substrate is basically the structure of the test device.

With the throughbore arrangement, the present test device eliminates the need of prior systems where it was necessary to select an area stained by the blood sample at the punching stage.

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The substrate (i.e. the holder card) serves as a guide means for this punching step. In this way, a consistent sample is more reliably achieved.

The Examiner has contended that the limitation with respect to the “throughbore” is a “functional limitation” of the apparatus and that such function of the apparatus is “not sufficient to patentably distinguish the invention over the prior art.”

Applicant respectfully disagrees. The term “throughbore” is a positive limitation of the claim language and is a physical property or characteristic of the present test device. The use of the throughbore is quite readily apparent from the description in Applicant’s specification and is present to allow a punch to pass through the throughbore in the substrate and punch out a portion of the supportive material containing the sample.

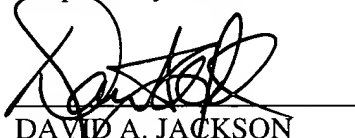
It is also clear that the Charlton *et al* reference does not have a throughbore and cannot be used in the manner of the present invention nor is there any suggestion in Charlton *et al* that the device of that reference can be so used. The device of Charlton *et al* has a layer 12 corresponding most closely to the top layer of the holder in the present invention and there is a bottom layer in Charlton *et al* that corresponds most closely to the bottom layer of the holder of the present invention. However, it must be noted that the bottom layer of Charlton *et al* is described as a bottom window layer 20 and does not have any bore at all, that is, the bottom window layer 20 is not provided with a hole and there is no reason set forth in the Charlton *et al* reference to ever have a hole in the bottom window layer since Charlton *et al* does not suggest or anywhere allude to punching out the sample via a throughbore.

Accordingly, there is no throughbore present in the Charlton *et al* reference due to the presence of the bottom window layer 20 and it is believed that the Charlton *et al* device could not function as intended with the bottom window layer removed or provided with a hole even if there was a suggestion to do so.

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It is therefore submitted that this clarification should make clear the differences in structure of the present invention, along with the different function of the present device, to render the present claims patentably distinct over the references of record and an allowance of the claims in this application is respectfully solicited.

Respectfully submitted,



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